

REMARKS

This is a full and timely response to the non-final Official Action mailed August 22, 2008 which imposed a Restriction Requirement in the present application. Accordingly, Applicant makes the following election and requests that examination of the elected claims on their merits be promptly conducted in light of the following remarks.

In the outstanding Office Action, the Office alleges that the present application contains claims drawn to three independent and patentably distinct species of invention. (Action, p. 2). The species are identified by the Action as follows:

Species 1: Figs. 3 & 4;

Species 2: Fig. 5; and

Species 3: Fig. 6.

In response, Applicant elects Species 1, represented by Figs. 3 and 4 for immediate examination.

This election is made with the strongest possible traverse. According to the Office Action, the “species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species.” (Action, p. 2). This is a conclusion that has no support on the record and that is clearly and demonstrably incorrect.

Figs. 3-6 all show flowcharts. Fig. 6 illustrated a method, as recited in claim 1, for example, in which a system for detecting potential counterfeiting of print cartridges comprising at least one printing device programmed to: read date information (132) from an installed print cartridge, and transmit a message (135) regarding said date information to a monitoring server. The recitations of claim 1 can be read on any Figs. 3-6.

Fig. 5 illustrates the same method, but adds the step of comparing the date information from the print cartridge with the current date. Figs. 3 and 4 illustrate the same

method but add the step of determining the difference between the current date and date information from the print cartridge before transmitting the message to the monitoring server.

Thus, Figs. 3-6 are illustrating a common method at different levels of detail. It is, therefore, unreasonable to state the Figs. 3-6 illustrated mutually exclusive subject matter. There is nothing about Fig. 6 that excludes the additional steps shown in Figs. 3-5.

Applicant notes that the recent Action does not provide any explanation as to how or why the different species are thought to be mutually exclusive. Rather, the Action merely draws the unsupported conclusion that the species are mutually exclusive and bases the entire propriety of the Restriction Requirement on this unsupported and incorrect conclusion. Applicant respectfully requests that the Examiner either adequately explain how the species are mutually exclusive on the record or withdraw the Restriction Requirement.

Additionally, according to the MPEP § 803, if the search and examination of claims in an application can be made without serious burden, the examiner must examine those claims on the merits, even though they include claims to independent or distinct inventions. In the current Office Action, the Examiner argues that there is a serious burden in this case only “due to their [the species] mutually exclusive characteristics.” (Action, p. 2). However, as demonstrated here, there is no such mutual exclusivity.

Consequently, the recent Action fails to demonstrate how or why there would be a serious burden to examine all of Applicant’s claims in the present application. Until such a showing has been made, no Restriction Requirement is proper.

In light of the foregoing explanation, Applicant finds that the claims correspond to the Figures as follows.

Claims generic to all of Figures 3-6: 1-8, 12-21, 25-37, 39-41 and 45-48;

Claims specific to Figs. 3 and 4: 9-11, 22-24, 38 and 42-44;

Claims specific to only Fig. 5: none;

Claims specific to only Fig. 6: none.

Accordingly, as noted above, Applicant hereby, with traverse, elects the alleged “species” associated with Figs. 3 and 4. Therefore, no claims are withdrawn from consideration as all claims are either generic or directed to the elected “species.”

Applicant does not disclaim any subject matter by this election reserves the right to file any number of continuation or divisional applications to any subject matter described in the present application.

An examination of claims 1-48 on their merits is now respectfully requested. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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/Steven L. Nichols/

Steven L. Nichols

Registration No. 40,326

Steven L. Nichols, Esq.
Managing Partner, Utah Office
Rader Fishman & Grauer PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, Utah 84095

(801) 572-8066
(801) 572-7666 (fax)